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Supreme Court, U.S.
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No. 00- 01-63 JUL 12 2001

IN THE SUPREME COURT OF THE UNITED STATES

JEANNE WOODFORD, Warden, *Petitioner,*

v.

JAMES RICHARD ODLE, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE
QUESTION PRESENTED

Whether a trial court is required to conduct a hearing *sua sponte* on competence to stand trial solely because evidence is presented as a defense to the criminal charges that the defendant sustained brain damage several years before commission of the crime and trial.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 00-

JEANNE WOODFORD, Warden, *Petitioner,*

v.

JAMES RICHARD ODLE, *Respondent.*

Jeanne Woodford, Warden, California State Prison at San Quentin, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION OR JUDGMENT BELOW

The opinion of the Court of Appeals, App. A at 1-10, is reported at 238 F.3d 1084 (9th Cir. 2001). The order of the Court of Appeals denying rehearing and the suggestion for rehearing en banc, App. B at 11, is unreported. The order of the District Court granting the State's motion for summary judgment on the claim at issue in this petition, App. C at 12-61, is reported at 919 F.Supp. 1367 (N.D.Cal. 1996). The District Court filed three other published orders denying relief on all of Odle's claims: App. D at 62-110, reported at 754 F.Supp. 749 (N.D.Cal. 1990); App. E at 111-166, reported at 884 F.Supp. 1404 (N.D.Cal. 1995); App. F at 167-186, reported at 65 F.Supp.2d 1065 (N.D.Cal. 1999).

STATEMENT OF JURISDICTION

The order of the Court of Appeals denying a timely petition for rehearing was entered on April 20, 2001, App. B. The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

On the evening of April 29-30, 1980, Odle killed Rena Aguilar because he thought she was going to tell the police he had stolen a van. He hid in Rena's house in Pinole, California, and attacked her when she left her room to answer the telephone. Odle beat and choked Rena, then dragged her from the house into a van where he stabbed her multiple times. She jumped or was thrown from the van and was found on the porch of a nearby house, beaten and eviscerated. Prior to the killing Odle drank beer and used drugs, but all witnesses described him as behaving rationally and deliberately.

After the killing Odle fled the area and committed a series of crimes. He obtained a rifle which he used in a robbery, then sawed off the barrel, vowing the police would never take him alive. Upon returning to the Pinole area on May 3, Odle was spotted by the police and surrounded in some bushes near a creek. When Pinole police officer Floyd Swartz leaned around a bush during efforts to convince him to surrender, Odle stood,

faced the officer, and fired a single shot. He struck Officer Swartz in the neck and killed him. Odle was arrested a few hours later. Shortly after his arrest Odle was interviewed by Dr. Hugh Winig, a psychiatrist hired by the district attorney's office.

Before the trial began Odle filed an in limine motion to suppress incriminating statements he made to Dr. Winig. At a hearing before the trial court, the doctor testified that he observed no psychiatric condition that interfered with Odle's ability to comprehend the nature of the interview. During cross-examination the doctor testified that Odle told him about an injury to his head several years earlier which resulted in surgery, and medical records confirmed that a piece of Odle's brain had then been removed. Odle told Dr. Winig about behavioral problems and violent outbursts for a period following the surgery. The doctor did not question Odle further because he observed nothing to suggest that Odle's ability to comprehend had been impaired.

In support of his motion to suppress defense counsel argued that Odle's waiver of rights was involuntary because he was not properly admonished. Counsel did not suggest Odle was mentally incapable of waiving his rights nor did he suggest that Odle was unable to stand trial. The trial court found the waiver was not knowing and intelligent but was neither asked to nor made any finding of mental incompetence.

During other pre-trial proceedings Odle personally waived the statutory time to begin trial and his presence at an in camera proceeding. He pleaded guilty to a charge of former felon in possession of a firearm and admitted prior felony conviction allegations. The trial court found Odle's waiver was free and voluntary.

At the guilt phase of trial Odle's defense was based primarily upon evidence of his 1973 automobile accident and the resulting injury to his brain, which was offered to show diminished capacity. Testimony from the brain surgeon and medical records established that a surgical incision had been made in Odle's skull and the tip of the left temporal lobe of his

brain was removed. The jury and trial court also heard testimony describing Odle's difficulty controlling his anger in the period after the surgery. There were indications through 1975, two years after the surgery, of self-destructive and suicidal behavior resulting on occasion in Odle being admitted to the county psychiatric ward for observation and treatment. The expert testimony was based on either prior treatment of Odle or review of the medical records. None of the defense experts interviewed Odle in preparation for their testimony.

In 1976 Odle was convicted of robbery and auto theft and sent to prison. Records from the California Department of Corrections (CDC) offered in Odle's 1983 murder trial indicated that while in jail following his arrest for the 1976 offense Odle once inflicted superficial injuries to his wrists before going to court. There were no suggestions of suicidal behavior while in prison. Psychiatric reports from the CDC records stated that Odle's head injury had no bearing on his criminal behavior, that he had compensated for the injury, and that he had no psychotic symptoms. Odle was paroled in 1979.

The defense also introduced county medical records although their contents were not discussed in any detail during testimony or argument. They demonstrated that Odle apparently started a fire in his jail cell in September 1982, about seven months before trial. His behavior was described as careful and deliberate with no signs of psychosis; Odle denied any suicidal intent.

Odle was convicted of two counts of first degree murder and several other offenses. The same jury later returned a sentence of death. At no time during the trial did defense counsel raise concerns about Odle's competence to stand trial or ask the trial court to conduct a hearing on Odle's competency, nor did the court do so *sua sponte*.[1/]

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1. California Penal Code § 1368 imposes a statutory duty on both defense counsel and the trial court to declare a doubt as to the defendant's competence when appropriate.

Odle's convictions and death sentence were affirmed by the California Supreme Court in 1988. The court denied a state habeas corpus petition in 1989. Odle's original federal habeas corpus petition was denied in December 1990. App. D.[2/] In none of these actions did Odle contend the trial court should have conducted a competency hearing. Two of Odle's trial experts examined him for the first time after trial and submitted declarations in support of Odle's habeas corpus petitions. They opined that it would be inappropriate to execute him because of his brain damage but neither suggested Odle was incompetent in any respect during his trial.

The district court granted Odle's motion for reconsideration. He subsequently filed two additional state habeas corpus petitions. Not until the third petition did Odle allege that the state trial court erred by failing to declare a doubt about competence and conduct a hearing. His claim was based almost entirely upon the opinions of new experts who examined Odle more than eight years after trial. The California Supreme Court denied relief and Odle amended his federal petition to add his newly exhausted claims. The district court rejected the claim of incompetence to stand trial, finding a "reasonable trial judge would not have had a substantial doubt about Odle's competence to stand trial." App. C at A-18.

Odle appealed denial of his habeas corpus petition, raising nine claims including the allegation of incompetence to stand trial. A Ninth Circuit panel determined that four of the claims did not justify the issuance of a certificate of appealability [COA].[3/] App. A at A-3-4. With respect to Odle's claim of

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2. Because Odle's petition was filed prior to enactment of the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] the deferential standard of review now contained in 28 U.S.C. § 2254(d) is not applicable to this case. *Lindh v. Murphy*, 521 U.S. 320 (1997).

3. Odle's notice of appeal was filed after enactment of

incompetence, the panel held that in light of the "massive trauma" to his brain demonstrated by the guilt phase testimony and various documents describing "psychotic behavior" and alleged suicide attempts, the "reasonable and appropriate course of action" for the trial court was a declaration of doubt and a hearing on whether Odle was competent to stand trial. App. A at A-8. The panel dismissed the absence of any suggestion from any participant at trial, including defense counsel, that Odle may have been incompetent, in part because "counsel is not a trained mental health professional." App. A at A-7. That Odle behaved appropriately during trial may simply have "mask[ed] an incompetence to meaningfully participate in the process." The panel concluded that Odle must have the "mental acuity to see, hear and digest the evidence, and the ability to communicate with counsel in helping prepare an effective defense." App. A at A-8. The trial court's failure to conduct a competence hearing denied Odle his right to due process. App. A at A-8.

The panel determined that the state could cure its failure to hold a competency hearing at the time of trial by conducting one retroactively. It thus remanded to the district court with instructions to grant the writ of habeas corpus unless the state conducted a competence hearing within 60 days. The panel held in abeyance the remaining issues on appeal pending outcome of the hearing and any further litigation on that issue in the district court. App. A at A-9-10. The panel subsequently stayed issuance of its mandate until resolution of this petition for writ of certiorari.

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the AEDPA but before this Court's decision in *Slack v. McDaniel*, 529 U.S. 473 (2000), and the district court, consistent with then applicable circuit precedent, issued a general certificate of probable cause rather than an issue-specific COA.

REASONS FOR GRANTING THE WRIT

Based on its concerns for comity, federalism, and finality, this Court has "found it necessary to impose significant limitations on the discretion of federal courts to grant habeas relief." *Calderon v. Thompson*, 523 U.S. 538, 554-555 (1998). Among those limitations is the prohibition against creating new rules of criminal procedure in habeas corpus proceedings. *Teague v. Lane*, 489 U.S. 288 (1989). A federal habeas court "is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). The Eleventh Circuit emphasized in *Watts v. Singletary*, 87 F.3d 1282, 1290 (11th Cir. 1996), that federal courts in habeas corpus proceedings "should not consider claims of mental incompetence to stand trial where the facts are not sufficient to positively, unequivocally, and clearly generate a real, substantial, and legitimate doubt as to the mental capacity of the petitioner." As did the federal circuit court in *Maggio v. Fulford*, 462 U.S. 111 (1983) (per curiam), the Ninth Circuit ignored such cautions.

"It is well established that the Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial." *Medina v. California*, 505 U.S. 437, 439 (1992) (citing *Drope v. Missouri*, 420 U.S. 162 (1975)). The test for competence is whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960).

The Court has required states to follow procedures sufficient to protect a defendant's right to be tried only if competent. Specifically, whenever the evidence raises a bona fide doubt as to competence the trial court must suspend the

criminal proceedings until the issue of competence has been resolved. *Pate v. Robinson*, 383 U.S. 375, 385 (1966). Even if a defendant appears competent at the start of trial the court must be alert to changes in his condition that may render him incompetent to proceed. *Drope v. Missouri*, 420 U.S. at 181.

California has enacted constitutionally sufficient procedures for raising and determining claims of incompetence to stand trial. Cal. Penal Code § 1367 et seq.; *see Medina v. California*, 505 U.S. at 453 (upholding adequacy of California's procedures). Those procedures were not invoked in Odle's trial because neither defense counsel, the prosecutor, nor the trial court entertained any doubts about Odle's competence. Indeed, Odle's competence and the trial court's obligation to conduct a hearing on that issue were not asserted in any court proceeding, nor was it apparent to any counsel representing him, until nine years after trial when it was presented in Odle's third state habeas corpus petition. The claim was based almost entirely upon the opinions of new experts who first examined Odle some eight years after trial.

Odle's allegations of incompetence and failure to comply with *Pate* were rejected by the state supreme court and the district court. Nonetheless, a panel of the Ninth Circuit determined that the record before the state trial court compelled the declaration of a doubt about competence and mid-trial proceedings to resolve the issue. The trial court's failure to do so, the panel found, resulted in constitutional error. Were this decision by the circuit court merely a disagreement about application of existing legal principles to the facts of a particular case we would have no occasion to seek further review from this Court. That, however, is not the situation. Rather, the Ninth Circuit panel radically expanded the circumstances under which competence hearings must be conducted by creating a per se rule governing such hearings and did so in the context of a federal habeas corpus challenge to a state criminal judgment where such new rules are prohibited by *Teague*.

"[A] competency determination is necessary only when a

court has reason to doubt the defendant's competence." *Godinez v. Moran*, 509 U.S. 389, 402, n. 13 (1993). There are, we recognize, a number of factors relevant to determining whether a competency inquiry is required; "even one of these factors standing alone may, in some circumstances, be sufficient." *Drope v. Missouri*, 420 U.S. at 180. While the Court has never "prescribe[d] a general standard with respect to the quantum of evidence necessary to require" a hearing on competence, *id.*, the circumstances which it has found sufficient to trigger such proceedings are conspicuously absent from Odle's record.

Unlike other cases, *see Drope*, 420 U.S. at 176-177; *Pate*, 383 U.S. at 384, Odle's counsel never suggested that he was incompetent to stand trial. Indeed, a declaration filed by lead counsel in the habeas corpus proceedings makes no reference to any doubts about competence, while co-counsel stated that he never considered the issue. Although defense counsel "will often have the best-informed view of the defendant's ability to participate in his defense," *Medina v. California*, 505 U.S. at 450, the Ninth Circuit discounted that teaching by observing that counsel were not trained mental professionals. App. A at A-7. The record, however, confirms that counsel consulted regularly with Odle throughout the proceedings. *Cf. Cooper v. White*, 517 U.S. 348, 353, n. 2 (1996) (defendant did not communicate with or sit near defense counsel during the trial).

Similarly, Odle displayed no bizarre or unusual behavior during the course of trial. *Cf. Drope* (defendant attacked his wife the day before trial, although her testimony was critical to the prosecution case and she had hesitated about going forward; during trial he shot himself and was absent from the courtroom). Odle had engaged, several years earlier, in what could be characterized as suicidal behavior but none occurred during trial. An incident involving a fire in Odle's cell about eight months before trial was never expressly brought to the attention of the trial court. The Ninth Circuit dismissed the lack of any disruptive behavior by Odle on the theory that such passivity

"may mask an incompetence to meaningfully participate in the process." App. A at A-8.[4]

Although Odle sustained a severe injury to his head resulting in removal of the tip of the temporal lobe of his brain, those events occurred ten years before trial. He exhibited violent and arguably self-destructive behavior for two years after the surgery, but did not do so while in prison from 1976 through 1979, or during the events leading up to or in commission of the murders in 1980, or during trial. *Cf. Pate* (defendant had a long history of disturbed behavior). Prison records demonstrated that he had no psychotic symptoms. Nonetheless, the Ninth Circuit concluded that a doubt about competence should have been declared simply because Odle "was missing a piece of his brain the size of grapefruit." App. A at A-8.[5]

Despite the absence of any objective signs of incompetence during trial, the Ninth Circuit apparently reasoned, a doubt should nevertheless have been declared because "the large body

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4. In *Pate*, 383 U.S. at 385, the Court explained that a defendant's demeanor at trial could not be relied upon to foreclose a hearing on competence when there was uncontradicted testimony of a history of irrational behavior and defense counsel had placed the defendant's sanity in issue. By contrast Odle's irrational behavior was largely limited to a two-year period following his injury and surgery, was not manifested during trial, and the defense of diminished capacity was not premised on any claims of insanity.

5. At trial the brain surgeon testified that he removed 6 or 7 centimeters of Odle's brain tissue, which he described as about 3 inches by 3 inches by 4 inches. During guilt phase argument defense counsel questioned the doctor's description of how much of the brain was actually removed. The basis for the Ninth Circuit's description of how much brain matter was removed is not clear from the record.

of clinical evidence . . . tended to cast doubt on his competence." App. A at A-6. However, the "clinical record" (presumably the testimony of the defense experts in the guilt phase[6/]) did not suggest that Odle's injury or surgery had any effect on his ability to assist counsel at trial. Indeed, none of the defense witnesses had examined Odle before trial or could speak to his present mental condition. But Dr. Winig, a psychiatrist who did interview Odle shortly after his arrest and was aware of Odle's head injury, testified in a pretrial hearing that he did not observe any active mental aberration that would interfere with Odle's ability to comprehend. There is nothing in the record to suggest that Odle's condition deteriorated in the time between his arrest and trial.[7/] The detailed testimony about Odle's injury, surgery, and subsequent behavior presented in the defense case was necessarily considered by the trial court in light of Dr. Winig's earlier testimony. Simply put, no expert ever suggested before or during trial that Odle was incapable of standing trial for any reason.

The Ninth Circuit nevertheless concluded that Odle "may

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6. Any reliance by the circuit court or Odle on the opinions of posttrial experts to support an attack on the trial court's failure to conduct a competency hearing would be wholly inappropriate. A state court cannot be faulted for failing to act on evidence which did not exist at the time of trial. *See Drope v. Missouri*, 420 U.S. at 174-175 (issue of whether trial court should have conducted a competency hearing is based on evidence known to the court).

7. The Ninth Circuit noted that Odle's alleged suicide attempt by setting his cell on fire occurred while in jail several months prior to trial. App. A at A-6-7. At best that information was in documents admitted at trial but never expressly brought to the attention of the trial court. Standing alone or in combination with the evidence of Odle's brain injury it did not raise a bona fide doubt about competence.

never have recovered" from the accident and surgery, App. A at A-5, and may have masked his mental impairment, both from the court and trial counsel, by his calm behavior, App. A at A-8. In doing so the panel second-guessed the implied finding of the trial court (which observed and interacted with him over several months of trial) that Odle was competent throughout the proceedings. The panel thus established the following per se rule: "[w]here a petitioner has suffered massive trauma to his brain and subsequently exhibits psychotic behavior, some of it while awaiting trial, an inquiry into whether he possesses the mental acuity to participate in the proceedings is the reasonable and appropriate course of action." App. A at A-8.

It is not the role of federal habeas courts to address what is "prudent or appropriate, but only what is constitutionally compelled." *United States v. Cronic*, 466 U.S. 648, 665, n. 38 (1984). The circuit court panel decision effectively compels a declaration of doubt and competence proceedings whenever the trial court is presented with evidence of brain damage and antisocial demeanor irrespective of the defendant's behavior during the proceedings or the lack of any suggestion of incompetence by trial counsel or any contemporary mental health experts. Because no decision of this Court mandates such a rule the panel decision violates the retroactivity prohibition of *Teague*.

The question of competence to stand trial is necessarily fact-specific and must be resolved on a case-by-case basis because reasonable jurists can differ on whether evidence of brain damage suggests incompetence in a particular case. *See, e.g., United States v. Ford*, 184 F.3d 566, 581 (6th Cir. 1999) (noting conflicting opinions on whether the defendant's brain damage rendered him incompetent). State courts no less than federal courts are bound by the legal standards set forth in this Court's opinions. It may be that evidence of serious brain damage sustained by a defendant might give the trial court pause to consider whether it effected the defendant's ability to stand trial. However, absent a substantial or bona fide doubt

about present competence a court is under no constitutional obligation to suspend proceedings and conduct a hearing.

By creating a per se rule compelling a hearing on competence to stand trial the Ninth Circuit panel has imposed a new and potentially onerous burden on state trial courts. While states could themselves adopt more rigorous standards of competence "the Due Process Clause does not impose these additional requirements." *Godinez v. Moran*, 509 U.S. at 402; *see also Arkansas v. Sullivan*, 121 S.Ct. 876 (2001) (per curiam) (reversing state supreme court for applying more expansive interpretation of Constitution than allowed by this Court's decisions). The Ninth Circuit's action, taken some 21 years after the murders and nearly 18 years after trial, exceeded that court's limited authority to review state criminal judgments. Review by this Court is necessary to set aside the Ninth Circuit's new and unwarranted rule on competence to stand trial. *See Maggio v. Fulford*, 462 U.S. at 111 (reversing circuit court order finding state prisoner had been incompetent at the time of trial).

CONCLUSION

For the reasons stated above certiorari should be granted.

Dated: July 9, 2001

Respectfully submitted,

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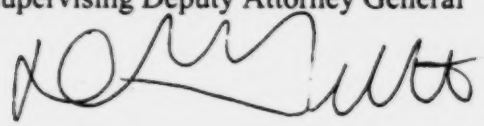

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